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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,351	03/29/2000	Katherine H. Guo	554-224 (Guo 3-3-2-22-2	6141

26291 7590 06/30/2004

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EXAMINER

ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 06/30/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

PR4

<b>Office Action Summary</b>	<b>Application</b> 09/538,351	<b>Applicant(s)</b> GUO ET AL.	
	<b>Examiner</b> David E. England	<b>Art Unit</b> 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06/01/2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10,13,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10,13,31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1 – 10, 13, 31 and 32 are presented for examination.

#### ***Response to Arguments***

1. Applicant's arguments filed 06/01/2004 have been fully considered but they are not persuasive.
2. In the remarks, applicants argued in substance that the enclosed declaration by the undersigned attorney and supporting exhibits, allege facts that establish that the Applicant conceived the invention prior to the reference date of Eyal, and that there was no break in diligence from the time of conception to: disclosing invention to his employer; the employer disclosing it to patent counsel; patent counsel interviewing the inventor; and preparing a draft application – all of which occurred before January 24, 2000, the reference date of Eyal. There was further continuous acts of diligence occurred within customary time periods. Accordingly, the invention was conceived before the reference date of Eyal and there was continuous diligence in constructive reduction to practice in filing the application. Therefore, Eyal is not valid prior art under § 103(a).
3. As to Applicants argument, the Examiner disagrees with the Applicant. The Examiner would like to draw the Applicants attention to the reference of Eyal U.S. Patent No. 6484199, Provisional Application date which is January 24, 2000. Examiner has reviewed the evidence disclosed by the Applicant and notices that there are no dates to

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prove that the Applicant has shown diligence and/or use of the invention before the date of Eyal's Provisional Application. Therefore, Examiner traverses Applicant's argument.

***Response to Amendment***

4. The declaration filed on 06/01/2000 under 37 CFR 1.131 has been considered but is ineffective to overcome the reference of Eyal U.S. Patent No. 6484199.

5. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the reference Eyal U.S. Patent No. 6484199. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

6. The Applicant does not state in the exhibits which specific claim the exhibit pertains to.

7. Furthermore, the exhibits do not specifically state the limitations of a method for distributing a streaming multimedia (SM) object in a network having a content server which hosts SM objects for distribution over said network through a plurality of helpful servers (HSs) to a plurality of clients, said method comprising:

8. calculating at said content server a server hotness rating for said SM objects hosted thereon;

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9. performing a categorization process, wherein each of said SM objects hosted by said content server are categorized into one of a plurality of server hotness categories based on each of said SM object's calculated server hotness rating;
10. multicasting from said content server at least one of said SM objects hosted thereon to a fraction of said plurality of HSs in the network, said fraction being determined according to said SM object's hotness category. Also, the exhibit evidence does not specifically teach parts of the other claimed limitations in the claims following claims 1, 5, 9 and 13.
11. Therefore, Examiner's rejection of claims 1 – 10, 13, 31 and 32 from the previous Office Action is restated below with Applicant's amended sections.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1 – 10, 13, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eyal U.S. Patent No. 6484199 in view of Herz U.S. Patent No. 6029195.
14. As per claim 1, Eyal teaches a method for distributing a streaming multimedia (SM) object in a network having a content server which hosts SM objects for distribution

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over said network through a plurality of helpful servers (HSs) to a plurality of clients, said method comprising:

15. calculating at said content server a server hotness rating for said SM objects hosted thereon, (e.g. col. 12, lines 37 – 67 & col. 30, line 13 – col. 31, line 63);

16. performing a categorization process, wherein each of said SM objects hosted by said content server are categorized into one of a plurality of server hotness categories based on each of said SM object's calculated server hotness rating, (e.g. col. 12, lines 37 – 67 & col. 30, line 13 – col. 31, line 63); but does not specifically teach multicasting from said content server at least one of said SM objects hosted thereon to a fraction of said plurality of HSs in the network, said fraction being determined according to said SM object's hotness category. Herz teaches multicasting from said content server at least one of said SM objects hosted thereon to a fraction of said plurality of HSs in the network, said fraction being determined according to said SM object's hotness category, (e.g. col. 45, lines 13 – 33). It would have been obvious to one skilled in the art at the time the invention was made to combine Herz with Eyal because it would be more efficient for a system to multicast data to a plurality of servers that could handle multiple users in a system that has potential to grow with more users and more media data that is being produced, (i.e. records and movies).

17. As per claim 2, Eyal teaches the step of associating a fraction to each of said plurality of predetermined hotness categories, (e.g. col. 8, line 46 – col. 25 & col. 26, lines 19 – 46 & col. 12, lines 37 – 67), but does not teach multicasting said SM objects. Herz teaches multicasting said SM objects, (e.g. col. 45, lines 13 – 33). It would have

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been obvious to one skilled in the art at the time the invention was made to combine Herz with Eyal because of similar reasons stated above.

18. As per claim 3, Eyal teaches the server hotness rating for each of said SM object's hosted by said content server is calculated as the sum of a plurality of helper hotness ratings, wherein the helper hotness rating for an SM object hosted by one of said plurality of HSs is defined as a total number of client requests for said SM object requested from said one of said plurality of HSs divided by a time span in which said client requests are received, (e.g. col. 30, line 13 – col. 31, line 63).

19. As per claim 4, Eyal teaches each of said plurality of server hotness categories are defined by a lower server hotness rating value and an upper server hotness rating value, (e.g. col. 30, line 13 – col. 31, line 63).

20. Claims 5 – 10, 13, 31 and 32 are rejected for similar reasons as stated above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 703-305-5333. The examiner can normally be reached on Mon-Thur, 7:00-5:00.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 703-308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David E. England  
Examiner  
Art Unit 2143

De



DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
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